

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 03-647

STATE OF MONTANA,

Plaintiff and Respondent,

v.

LEVI DANIELS,

Defendant and Appellant.

BRIEF OF RESPONDENT

On Appeal from the Montana Twentieth Judicial District Court, Lake County,
The Honorable C. B. McNeil, Presiding

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STATEMENT OF THE ISSUE

Is Daniels' request for postconviction relief procedurally barred by the one-year time bar in Mont. Code Ann. § 46-21-101(1)?

STATEMENT OF THE FACTS AND CASE

On March 11, 1999, pursuant to Mont. Code Ann. § 41-5-206 (1997), the State moved the district court for leave to file an Information charging Levi Daniels with Burglary, Theft (misdemeanor), Deliberate Homicide, and Use of Violence to Coerce Gang Membership. (D.C. Docs. 1, 2.) Pursuant to Mont. Code Ann. § 41-5-206(3) (1997), the district court granted the State leave to file the Information in the district court. (D.C. Doc. 3.) In its order, the district court stated in part: "Having reviewed the Affidavit in support of the Information filed herewith, the Court finds probable cause to believe that the Defendant committed the alleged offenses and that the seriousness of the offense[s] and the protection of the community require treatment of the Defendant beyond that offered by juvenile facilities." Id.

On March 11, 1999, the State filed its Information in district court charging Daniels with Burglary, Theft (misdemeanor), Deliberate Homicide and Use of Violence to Coerce Gang Membership. (D.C. Doc. 11.) The district court issued a warrant for Daniels' arrest, and he was arrested on March 11, 1999. (D.C. Doc. 7.)

On March 16, 1999, the district court granted the State's motion to amend the Information to add the charge of felony Criminal Mischief. (D.C. Docs. 11, 13, 14.)

In light of this Court's April 6, 1999 decision in State v. Butler, 1999 MT 70, 294 Mont 17, 977 P.2d 1000, on April 16, 1999, the prosecutor requested the district court to conduct a hearing. (D.C. Doc. 18.)¹ The prosecutor explained:

The purpose of the hearing is for the court to find pursuant to Section 41-5-206(3), MCA, whether "there is probable cause to believe that the youth has committed the alleged offense and that, considering the seriousness of the offense and in the interest of community protection, the case should be filed in the district court."

Id. at 1-2.

On May 12, 1999, the district court conducted a hearing to address the necessary findings as required by Mont. Code Ann. § 41-5-206. Daniels was present at the hearing along with his counsel. (5/12/99 Tr. at 2, attached to Appellant's Br. as Ex. A.) At the outset of the hearing, the prosecutor stated that the district court "had already found probable cause with regard to an affidavit." (5/12/99 Tr. at 2.) The prosecutor suggested the district court could take notice of

¹In Butler, this Court held that the district court violated Butler's right to due process under the federal constitution when it allowed the prosecution to file an Information in district court pursuant to Mont. Code Ann. § 41-5-206 without first affording Butler a hearing. Butler, ¶¶ 32-33. This Court stated, "due process requires the district court to hold a hearing when rendering a decision under § 41-5-206(3) M.C.A. (1997)." Id., ¶ 32.

the affidavit of probable cause and could make findings regarding the seriousness of the offense and the interest of the community. (5/12/99 Tr. at 3.)

The prosecutor then told the district court: “It’s my understanding, in conversation with defense counsel, that, rather than go through that hearing, the defendant would be stipulating that the Court could make those findings.”

(5/12/99 Tr. at 3.) Daniel’s counsel responded: “That’s correct, your Honor.” The district court then stated: “So ordered.” Id.

On May 14, 1999, the district court issued the following order regarding granting the State leave to file the Information in the district court under Mont. Code Ann. § 41-5-206(3) (1997):

In compliance with the Montana Supreme Court’s recent ruling in State v. Butler, No. 98-134, decided April 6, 1999, the Court held a hearing on the findings required by Section 41-5-206(3), MCA. Upon review of the affidavit of probable cause filed by the State and, stipulation of Deborah Kim Christopher, Lake County Attorney, and Benjamin Anciaux, counsel for the Defendant, with good cause shown therefore,

THE COURT MAKES THE FOLLOWING FINDINGS:

1. That there is probable cause to believe that the Defendant committed the alleged offenses; and,
2. That, considering the seriousness of the offenses and the interests of community, the case should be and is properly filed in district court.

(D.C. Doc. 20.)

Rather than proceed to trial, Daniels entered into a plea agreement with the State. (D.C. Doc. 31.) Daniels agreed to plead guilty to Burglary, Deliberate Homicide and Criminal Mischief. Id. at 6. The State in turn agreed to dismiss the offenses of Theft (misdemeanor) and Use of Violence to Coerce Gang Membership, as well as a petition filed in another case. Id. at 6-7. The State also agreed to recommend a fifteen-year Department of Corrections (DOC) sentence for Burglary, a forty-year DOC sentence for Deliberate Homicide, and a ten-year DOC sentence for Criminal Mischief. The recommendation also provided that the sentences would run concurrently. Id. at 7. The plea agreement also included Daniels' acknowledgment of his rights. Id. at 1-5.

On September 1, 1999, Daniels appeared in district court and pled guilty to Burglary, Deliberate Homicide by Accountability and Criminal Mischief. The district court accepted Daniels' pleas and also granted the State's motion to dismiss the charges of Theft and Use of Violence to Coerce Gang Membership. (D.C. Doc. 32.)

On October 20, 1999, the district court sentenced Daniels to the DOC for fifteen years for Burglary, forty years for Deliberate Homicide by Accountability and ten years for Criminal Mischief. The district court ordered the sentences to run concurrently, leaving Daniels with a total DOC sentence of forty years. (D.C. Doc. 38 at 1-2.) The district court also ordered Daniels ineligible for parole until he

served at least twenty years of his sentence. Id. at 2. Daniels never filed a direct appeal of his conviction or sentence.

On March 27, 2002, Daniels filed a pro se petition for postconviction relief and a supporting brief, alleging ineffective assistance of counsel and three claims of judicial error. (D.C. Docs. 43, 44.) On April 2, 2002, the district court appointed the Montana Appellate Defender to represent Daniels and ordered the State to respond to the petition. (D.C. Docs. 45, 46.) On April 22, 2002, the State filed its response, arguing, in part, that the one-year time bar under Mont. Code Ann. § 46-21-102 barred Daniels' postconviction petition. (D.C. Doc. 47 at 6.)

On September 13, 2002, Daniels filed an amended postconviction petition and supporting memorandum. Daniels claimed that the district court lacked subject matter jurisdiction over his case because he had not personally stipulated to or waived his right to a transfer hearing. (D.C. Docs. 50, 51.) On October 31, 2002, the State filed a response in opposition to the amended petition. (D.C. Doc. 52.)

On December 5, 2002, Daniels moved for leave to file a second amended petition for postconviction relief. The State did not object to Daniels' motion and the district court granted the motion. (D.C. Docs. 53, 55.) On December 6, 2002, Daniels filed his second amended postconviction petition along with a supporting memorandum. (D.C. Docs. 56, 57.) Daniels asserted the additional claim that, pursuant to Mont. Code Ann. 41-5-206(6) (1997) and Mont. Code Ann.

§ 46-18-201(1) (1997), the district court could only impose a maximum five-year DOC sentence and, the district court's sentence exceeded this five-year maximum.

Id.

On February 10, 2003, the prosecutor filed a response, conceding that Daniels' claim was correct and that Daniels could not be sentenced to the DOC for more than five-years on each of his convictions. (D.C. Doc. 62 at 3-4.) The prosecutor requested that the district court modify its sentence and sentence Daniels to the DOC for five years, consecutively, for each of his three convictions--for a total sentence of fifteen years. The prosecutor also requested that the district court declare Daniels ineligible for parole. (D.C. Docs. 73.5, 63 at 4.)

On April 28, 2003, the district court issued its Findings of Fact, Conclusions of Law and Order. (D.C. Doc. 66.) Regarding Daniels' claim that the district court lacked subject matter jurisdiction, the district court concluded:

That the requirement of a transfer hearing was satisfied when the Defendant's attorney, in the presence of the Defendant and in open court, stipulated to the necessary findings. The Defendant cites State v. Tapson, 41 P.3d 305 (2001), for the proposition that a Defendant can only waive a fundamental right by making a personal waiver on the record. That rule was limited to the specific circumstances that occurred in that case. Tapson, 41 P.3d at 312. The Court notes that the current version of the transfer statute, Sec. 41-5-206 MCA (2001), specifically allows the youth's counsel to waive such hearing in writing or on the record.

Id. at 2.

Regarding Daniels' claim that the district court's sentence exceeded the five-year maximum DOC sentence under the 1997 statutes, the district court concluded: "[T]he sentence recommended by both the State and the Defendant, and imposed by the Court, exceeds the maximum punishment allowed by law at the time the Defendant was sentenced." Id. at 3.

The district court denied Daniels' request to vacate his convictions. The court vacated his sentence and set a new sentencing hearing. Id.

On June 25, 2003, the district court conducted a resentencing hearing. (D.C. Docs. 73.5, 75.) The Court sentenced Daniels to the DOC for five years for Burglary, five years for Deliberate Homicide with an additional twenty-five years suspended, and five years for Criminal Mischief. (D.C. Doc. 75 at 2.) The district court ordered the sentences to run consecutively for a total DOC sentence of fifteen years with an additional twenty-five years suspended. Id. The district court ordered Daniels ineligible for parole for the first fifteen years of his sentence. Id. The district court issued its written amended judgment and sentence on July 3, 2003. (D.C. Doc. 75.)

SUMMARY OF THE ARGUMENT

Daniels claims that the district court lacked subject matter jurisdiction over his case because his case was improperly transferred from youth court to district

court. Daniels' postconviction claim is time barred by Mont. Code Ann.

§ 46-21-102(1)(a) and, therefore, he is not entitled to any postconviction relief.

The district court overlooked the fact that Daniels' postconviction claim was time barred. The State urges the Court to reexamine the time bar question, since its jurisdictional, and resolve that question in favor of the State and deny Daniels postconviction relief.

ARGUMENT

I. STANDARD OF REVIEW

On appeal, this Court reviews a district court's denial of a postconviction petition to determine whether its findings are clearly erroneous and whether its conclusions of law are correct. Pena v. State, 2004 MT 293, ¶ 14, ___ Mont. ___, ___ P.3d ___. In addition, this Court will affirm a district court's ruling if the district court reaches the correct result, even if it does so for the wrong reasons. Raugust v. State, 2003 MT 367, ¶ 9, 319 Mont. 97, 82 P.3d 890.

II. DANIELS' POSTCONVICTION CLAIM IS TIME BARRED BY MONT. CODE ANN. § 46-21-102.

Daniels only raises one postconviction issue on appeal. Daniels argues that his case was not properly transferred from youth court to district court because he did not expressly waive his right to a transfer hearing from youth court. Daniels

faults the district court for relying on his counsel's representation to the court on the record, in Daniels presence, that Daniels did not wish to contest the existence of the statutory factors found in Mont. Code Ann. § 41-5-206(3) (1997). Daniels asserts that the district court lacked subject matter jurisdiction over his case because the transfer hearing from youth court to district court was improper. Daniels requests that this Court vacate his conviction and remand his case to the youth court for a transfer hearing.

Montana Code Annotated § 46-21-102 states in relevant part:

When petition may be filed. (1) Except as provided in subsection (2), a petition for the relief referred to in 46-21-101 may be filed at any time within 1 year of the date that the conviction becomes final. A conviction becomes final for purposes of this chapter when:

(a) the time for appeal to the montana supreme court expires;

....

In this case, Daniels never filed a direct appeal. Accordingly, under Mont. Code Ann. § 46-21-102(1)(a), his conviction became final when the time for filing his appeal to the Montana Supreme Court expired. Montana Rule of Appellate Procedure 5(b) requires an appellant in a criminal case to file his notice of appeal within sixty days after entry of judgment. The district court entered its written judgment and commitment on October 21, 1999. (D.C. Doc. 38.) Thus, Daniels' time for filing his appeal expired on December 20, 1999. Daniels had one year from December 20, 1999, or until December 20, 2000, to file a petition for postconviction

relief in the district court. Daniels first raised his postconviction claim regarding the district court's lack of subject matter jurisdiction in his September 13, 2002, amended petition for postconviction relief. (D.C. Docs. 51, 52.) Daniels' amended petition and his specific claim regarding the district court's alleged lack of subject matter jurisdiction is untimely and barred by Mont. Code Ann. § 46-21-102(1)(a).

In response to the clear time bar, Daniels argues: "If the district court never has subject matter jurisdiction over [his] case, the proceedings in district court were null and void. Thus, the time limits set forth in the postconviction statute, § 46-21-101, MCA, *et. al.*, cannot be considered as a procedural bar to [his] claims." (Appellant's Br. at 9.) This Court should refuse to address Daniels' argument because he cites no authority in support of his argument. Mont. R. App. 23(a)(4); State v. Rodarte, 2002 MT 317, ¶ 15, 313 Mont. 131, 60 P.3d 983.

In addition, the district court had subject matter jurisdiction over his case and, therefore, Daniels' postconviction claim is a nonjurisdictional claim. Moreover, even if Daniels' postconviction claim was truly a jurisdictional claim, his claim still must comply with the time requirements under Mont. Code Ann. § 46-21-102, and he has failed to do so.

A. The District Court Had Subject Matter Jurisdiction of Daniels’ Case.

This Court has defined “jurisdiction” as the power or capacity of a district court to hear a particular cause of action and to render a judgment therein.

Pena, ¶ 21. A district court is granted jurisdiction by the Constitution and by state statute. Id. Article VII, § 4 of the Montana Constitution confers jurisdiction to the district court “in all criminal cases amounting to felony and . . . such additional jurisdiction as may be delegated by the laws of the state of Montana” Montana Code Annotated § 41-5-203 (1997) generally grants exclusive original jurisdiction to the youth court for violations of state law committed by a youth other than traffic and fish and game violations. See State v. Bedwell, 1999 MT 206, ¶ 6, 295 Mont. 476, 985 P.2d 150; Butler, ¶14.

The Legislature, however, has provided exceptions to the youth court’s exclusive jurisdiction, one of which is when the county attorney files a motion for leave to file an Information directly with the district court. Bedwell, ¶ 6; Mont. Code Ann. § 41-5-206 (1997). Montana Code Annotated § 41-5-206(1) (1997) states in pertinent part:

Filing in district court prior to formal proceeding in youth court. (1) The county attorney may, in the county attorney’s discretion, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

....

(ii) deliberate homicide as defined in 45-5-102

....

(iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated homicide; or

....

Montana Code Annotated § 41-5-206(3) (1997) further states:

The district court shall grant leave to file the information if the court finds that there is probable cause to believe that the youth has committed the alleged offense and that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court.

In addition, Mont. Code Ann. § 41-5-206(5) (1997) allows additional offenses that arise during the commission of a deliberate homicide to be prosecuted in the district court.

In Bedwell, this Court explained that “once the State files its motion, the district court must accept jurisdiction over the case and grant leave to file the information in the event it finds that such action is warranted by the seriousness of the offense and the interests of community protection.” Bedwell, ¶ 12, citing Mont. Code Ann. § 41-5-206(3).

In Daniels’ case, the prosecutor, pursuant to Mont. Code Ann. § 41-5-206 (1997), moved for leave to file an Information directly with the district court, charging Daniels with Burglary, Theft, Deliberate Homicide, and Use of Violence to Coerce Gang Membership. (D.C. Docs. 1, 2.) Pursuant to Mont. Code Ann. § 41-5-206(3) (1997), the district court granted leave to file the Information in the district court. (D.C. Doc. 3.) The prosecutor later filed a motion for leave to file an Amended Information with the district court adding the additional charge of Criminal Mischief, and the district court granted the motion. (D.C. Docs. 11, 13.)

After this Court’s decision in Butler, the prosecutor requested that the district court conduct a hearing on the statutory findings required by Mont. Code Ann. § 41-5-206(3) (1997). (D.C. Doc. 18.) After holding the hearing, the district court found there was probable cause to believe that Daniels committed the alleged offenses and that “considering the seriousness of the offenses and interests of community, the case should be and is properly filed in district court.” (D.C. Doc. 20.)

In light of the district court’s findings under Mont. Code Ann. § 41-5-206(3) (1997), the district court had subject matter jurisdiction over Daniels’ case. Bedwell, ¶¶ 6, 12; Mont. Code Ann. § 41-5-203(1) (1997). The prosecutor’s filing of the Information with the district court terminated the jurisdiction of the youth court over Daniels with respect to the acts alleged in the Information. See Mont. Code Ann. § 41-5-206(4) (1997).

On appeal, Daniels has not challenged the district court's ultimate findings. He does not claim that there was a lack of probable cause to believe that he committed the offenses or that the seriousness of the offenses and the interest of community protection did not warrant the filing of the Information in the district court. Instead, Daniels argues that the district court lacked subject matter jurisdiction over his case because he never expressly waived his right to a transfer hearing from youth court to district court. According to Daniels, the absence of a waiver resulted in his case being improperly transferred from youth court to district court. Daniels' argument is not compelling because his case was never in youth court in the first place, and there never was a transfer hearing from youth court to district court.

Daniels' argument seems to ignore the statutory changes to the Youth Court Act that took place in 1997. As this Court explained in Butler: "Prior to 1997, a youth could not be criminally prosecuted as an adult unless the youth court transferred jurisdiction over the case to the district court." Butler, ¶ 9, citing Mont. Code Ann. § 41-5-206(5) (1995). In addition, prior to 1997, if the State intended to try a youth as an adult, the State was required to first file a petition in youth court requesting the youth court to transfer the case to district court. The youth court would then conduct an evidentiary hearing to determine whether to transfer the case from youth court to district court. Id.

The legislature amended the Youth Court Act in 1997. Butler, ¶ 10. Instead of first filing a petition in youth court and allowing youth court the discretion to transfer jurisdiction over certain cases to the district court, Mont. Code Ann. § 41-5-206 now allows the State to prosecute a youth directly in district court by requesting leave to file an Information in district court. Butler, ¶ 10.

In this case, there never was a petition filed in youth court, nor was there a transfer hearing in youth court in which the youth court transferred jurisdiction over Daniels' case to district court. The State, pursuant to Mont. Code Ann. § 41-5-206(1) (1997), filed a motion for leave to file an Information in the district court, and the district court, pursuant to Mont. Code Ann. § 41-5-206(3) (1997), granted the State leave to file the Information directly in the district court. The hearing that took place in district court on May 12, 1999, was not a transfer hearing from youth court to district court, but a hearing to determine whether the court could make the necessary finding under Mont. Code Ann. § 41-5-206(3) (1997). In light of the fact that a transfer hearing from youth court to district court never took place, nor was it statutorily required, Daniels' argument that district court lacked subject matter jurisdiction because he never expressly waived a transfer hearing from youth court to district court is baseless.

Article VII, § 4 of the Montana Constitution, and Mont. Code Ann. § 41-5-206 (1997), clearly provided the district court with subject matter

jurisdiction over Daniels' case. Daniels is not raising a jurisdictional claim because he is not challenging the district court's power or capacity to adjudicate his case. He is simply arguing that the district court could not rely on the stipulation of his attorney in making the necessary findings under Mont. Code Ann. § 41-5-206(3).

Even if this Court were to agree with Daniels and conclude that the district court improperly relied on his counsel's stipulation in making the necessary findings under Mont. Code Ann. § 41-5-206(3) (1997), Daniels' remedy is not a remand to youth court but to district court for it to conduct another hearing pursuant to Mont. Code Ann. § 41-5-206(3). The fact that this Court's remand would be to the district court rather than youth court further demonstrates that the district court had the power or capacity to hear Daniels' case or, in other words, the district court had subject matter jurisdiction over Daniels' case.

Daniels' assertion that the time-bar under Mont. Code Ann. § 46-21-102 does not apply to his case because he is raising a claim of subject matter jurisdiction is unpersuasive because the district court clearly had subject matter jurisdiction over his case.

B. Jurisdictional and Nonjurisdictional Postconviction Claims are Subject to the One-Year Time Bar Under Mont. Code Ann. § 46-21-102.

Even if this Court were to conclude that Daniels' postconviction claim was raising a challenge to the district court's subject matter jurisdiction, that claim is still time barred because under the postconviction statutes "both jurisdictional and nonjurisdictional claims must be filed within the time period prescribed by § 46-21-102, MCA." Pena, ¶ 29; see also ¶ 38 (stating that jurisdictional and nonjurisdictional claims alike are subject to the time limitation in § 46-21-102.)

Daniels first raised his postconviction claim regarding waiver and the district court's alleged lack of subject matter jurisdiction in his untimely September 13, 2003 amended postconviction petition. See Mont. Code Ann. § 46-21-102(1)(a). Daniels' failure to timely file his amended postconviction petition left the district court, as well as this Court, without jurisdiction to address his postconviction claim. Pena, ¶¶ 35, 38; Sanchez v. State, 2004 MT 9, ¶ 9, 319 Mont. 226, 86 P.3d 1; State v. Carson, 2002 MT 234, ¶¶ 12, 14, 311 Mont. 485, 56 P.3d 844.

The only statutory exception to the jurisdictional time bar, as codified in Mont. Code Ann. § 46-21-102(2), is newly-discovered evidence that, if proved and viewed in light of the evidence as a whole, would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted. Daniels has never made an allegation that newly discovered evidence would establish he

did not commit the offenses of Burglary, Deliberate Homicide and Criminal Mischief. In fact, Daniels pled guilty to those offenses. Daniels cannot satisfy the exception set forth in Mont. Code Ann. § 46-21-102(2).

Under this Court's case law, a waiver of the jurisdictional time bar under Mont. Code Ann. § 46-21-102(1) may also be justified upon a clear miscarriage of justice. Sanchez, ¶ 10; State v. Abe, 2001 MT 260, ¶ 15, 307 Mont. 233, 37 P.3d 77; State v. Rosales, 2000 MT 89, ¶ 7, 299 Mont. 226, 999 P.2d 313. A miscarriage of justice exists if the postconviction petitioner provides the court with newly-discovered evidence that proves the petitioner is actually innocent. Sanchez, ¶ 10; Rosales, ¶ 7. Daniels has not shown that he is actually innocent, and he cannot satisfy the clear miscarriage of justice exception.

Daniels' postconviction claim is time barred and therefore, he is not entitled to any postconviction relief on his claim that the district court lacked subject matter jurisdiction over his case.

CONCLUSION

This Court should deny Daniels postconviction relief because his amended postconviction petition is time barred by Mont. Code Ann. § 46-21-102(1)(a). Daniels' argument that the time bar does not apply here because the district court never had subject matter jurisdiction over his case is not compelling. The district

court clearly had subject matter jurisdiction over Daniels. Even if Daniels' postconviction claim was truly challenging the district court's subject matter jurisdiction, Daniels' claim is still time barred because nonjurisdictional and jurisdictional claims alike are subject to the one-year time bar in Mont. Code Ann. § 46-21-102(1)(a).

Respectfully submitted this ____ day of November, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Respondent to be mailed to:

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DATED: _____

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

MICHEAL S. WELLENSTEIN